

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

SUNDEE WILHITE BOLTON AND
TOMMY RAY BOLTON

CIVIL ACTION NO. 3:19-cv-00657

V.

JUDGE: TERRY A DOUGHTY

WENDELTA PROPERTY HOLDINGS,
LLC, LIBERTY MUTUAL INSURANCE
COMPANY

MAGISTRATE KAREN L. HAYES

AMENDING COMPLAINT FOR DAMAGES

NOW INTO COURT, through undersigned counsel, come SUNDEE WILHITE
BOLTON and TOMMY RAY BOLTON, who, with leave of Court, amend their petition herein
as follows:

Paragraph 1

Tommy Ray and Sundee Bolton are husband and wife, and major residents of Ouachita
Parish, whose mailing address is 122 Heritage Drive, West Monroe, LA 71291. They are
citizens of Louisiana.

Paragraph 2

Made defendants herein are:

- a. WENDELTA PROPERTY HOLDINGS, LLC ["Wendelta"], a citizen of Mississippi, and a foreign limited liability company which is licensed to do and doing business in Louisiana, and which has as its agent for service of legal process Cogency Global, Inc., 3867 Plaza Tower Dr., 1st Floor, Baton Rouge, LA 70816;
- b. WENDELTA, INC., a citizen of Mississippi, and a foreign limited liability company which is licensed to do and doing business in Louisiana, and which has as its agent for service of legal process Cogency Global, Inc., 3867 Plaza Tower Dr., 1st Floor, Baton Rouge, LA 70816;

- c. LIBERTY MUTUAL INSURANCE COMPANY ["Liberty Mutual"], a foreign insurance company licensed to do and doing business in Louisiana, which may be served with legal process through the Louisiana Secretary of State, 8585 Archives Ave., Baton Rouge, La. 70809; and
- d. MARY WASHINGTON, a citizen of Louisiana and a major resident of Monroe, Ouachita Parish, Louisiana, whose address is 5131 Highland Road, Monroe, La. 71202.

Paragraph 6

The manager of the store, Mary Washington, approached and asked if she was okay. Petitioner was helped from the floor and sat down. Mary Smith requested that Petitioner fill out a report, which she consented to and which the manager completed. A copy of the report was requested, but was not then provided. However, it was later provided through discovery, and confirmed the floor was wet, no wet floor signs were out, Mrs. Bolton fell and after her fall was complaining of injuries.

Paragraph 7

Petitioner asked whether someone had spilled a drink to cause the floor to be wet, and was told by Mary Washington that there was a leaking vent overhead which had been dripping condensation. She indicated store employees had been asking store management to have the leakage fixed for months, but it had never been repaired. The manager indicated this leakage was why she fell. The water on the floor was from this drip. Shortly after this incident, photographs were taken depicting the leaking vents.

Paragraph 8

In the area where the water was, the floor was dark colored, and there were no cones or signs or warnings of any type to alert Petitioner or other customers there was water on the floor. After her fall, store employees put out cones.

Paragraph 10

Defendants have acknowledged the Wendy's store was operated by Wendelta Property Holdings, LLC. However, Petitioners join Wendelta, Inc., which had the same address and agent, which may have leased the property at the time. Wendelta Property Holdings, LLC, Wendelta, Inc., Mary Washington and other employees of Wendy's were insured by a policy of liability insurance issued by Liberty Mutual, providing coverage for injuries caused by the neglect or fault of these persons and insuring to the benefit of those injured by this neglect or fault.

Paragraph 12

Mrs. Bolton's fall and resulting injuries were solely and proximately caused by the substandard conduct of defendants and other managers and employees of the Wendy's restaurant in failing to protect patrons from hazardous and unreasonably dangerous conditions or to warn them of the same, and for the following non-exclusive reasons:

- e. Failing to maintain the premises in a safe condition;
- f. Failing to post, or insure the posting by others of signs or warnings to alert patrons of the hazardous condition of the floor;
- g. Failing to repair a leaking condition about which they had been specifically informed for months which created a known hazard to unsuspecting customers and other persons within the store;
- h. Failing to promptly repair a leakage problem which they knew was causing customers to slip and fall; and
- i. In other particulars to be shown at trial.

Paragraph 12a

Petitioners assert that Mary Washington, as Manager, had the duty to protect, warn and safeguard customers of Wendy's from hazardous and unreasonably dangerous conditions; and

that Mrs. Washington had knowledge of leaking vents well in advance of the incident made the basis of this suit. She had reported the leakage and requested repairs. Despite this awareness, and having reported repeated leakage, Mary Washington did not block off the area or leave warning cones. With knowledge the drip would recur, Mary Washington took no preventive efforts other than having another spill cleaned up after being told water was again on the floor. Petitioners assert that when water was noticed on the floor, cones would be placed only until the area was mopped off, and then all warnings would be removed. No further action would be taken until someone again reported water from the dripping vents, when the same procedure would be taken. But this manager specifically knew there would be further leakage because repairs had not been made, and knew customers would be endangered by the water on the floor. Mrs. Washington is individually and jointly liable.

Paragraph 18

Complainants adopt as if set out *in extenso* herein other allegations contained within the original Petition (Complaint).

WHEREFORE, Petitioners pray that Defendants be cited and served with citation and this Petition, and ordered to answer same; and that after trial or due proceedings are had, that there be judgment herein in favor of **SUNDEE WILHITE BOLTON AND TOMMY RAY BOLTON**, and against **WENDELTA PROPERTY HOLDINGS, LLC; WENDELTA, INC.; MARY WASHINGTON and LIBERTY MUTUAL INSURANCE COMPANY**, jointly and *in solido*, in an amount deemed reasonable by this Court, together with interest at the legal rate from date of judicial demand until paid and all costs of this proceeding.

Respectfully submitted,

By: / s / *Charles H. Heck*
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**Counsel for Sundee Wilhite Bolton and
Tommy Ray Bolton**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been served upon all counsel of record via facsimile, electronic mail, and/or U.S. Mail, properly addressed and postage prepaid, on January 30, 2020.

 /s/ *Charles H. Heck*
CHARLES H. HECK, Bar #06743

Please Serve Defendants:

1. **Wendelta, Inc.**, through its agent for service of legal process Cogency Global, Inc., 3867 Plaza Tower Dr., 1st Floor, Baton Rouge, LA 70816; and
2. **Mary Washington**, at 5131 Highland Road, Monroe, La. 71202.